DOCUMENT RESUME

ED 434 276 CG 029 234

TITLE	Professional Counselor's Guide to Federal Law on Student Records.
INSTITUTION	American Counseling Association, Office of Public Policy and Information, Alexandria, VA.
PUB DATE	1999-03-00
NOTE	59p.
AVAILABLE FROM	American Counseling Association, Office of Public Policy and Information, 5999 Stevenson Ave., Alexandria, VA 22304-3300 ($10). Tel: 800-347-6647, ext. 222 (Toll Free).
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Confidentiality; Counselors; Elementary Secondary Education; *Federal Legislation; Higher Education; *Parent Rights; State Departments of Education; *Student Records; *Student Rights
IDENTIFIERS	*Family Educational Rights and Privacy Act 1974; *Hatch Amendment; Individuals with Disabilities Education Act

ABSTRACT

This publication, intended for use by counselors, provides an overview of federal law related to student records. The following topics are covered: protecting the confidentiality of student records, the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment, and the Individuals with Disabilities Education Act. The discussion of the FERPA explains which institutions must comply, how the FERPA is enforced (including its penalties), which documents are and are not considered student records, who has rights to student records, when student records may be disclosed to others, what rights parents and students have to review records, what rights parents and students have to challenge the content of student records, what limitations the FERPA imposes on the retention of student records, what schools tell parents and students about their rights, and how the FERPA applies to student records maintained by state education agencies. Samples of the following FERPA forms are included: Request to Review an Education Record, Consent Form to Parent/Student Request to Review an Education Record, Consent Form to Permit Accompanying Person to Review an Education Record, Request to Amend an Education Record, Notification of Approval/Disapproval of Request for an Amendment, Notice of Hearing on Request for an Amendment to Education Records, Model Notification of Rights for Elementary and Secondary Institutions, and Model Notification of Rights for Postsecondary Institutions. Also included are the texts of the Family Educational Rights and Privacy Act, the Proposed Protection of Pupil Rights Amendment, and the Individuals with Disabilities Education Act Regulations on Student Records. (Author/MKA)

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This publication provides an overview of federal laws related to student records. It does not provide legal advice. If legal advice is needed, readers should seek the assistance of a competent legal professional.

Addendum

In September of 1998, Congress passed the Higher Education Amendments of 1998 and made several significant changes in post-secondary education policy. The bill, signed into law by President Clinton on October 7, 1998, represented a philosophical change in the governance of institutions of higher learning, granting them greater flexibility and discretion over campus policies on confidentiality. The Act changes two practices governing student records on crimes of violence, and alcohol and drug abuse for higher education institutions.

The Act permits, but doesn't require, two new disclosure activities. Both disclosure activities were previously prohibited under federal law.

Release of student records to parents in instances of alcohol or drug abuse.

OLD LAW: Post-secondary institutions are prohibited from disclosing information from a student's records without the student's consent.

NEW LAW: Post-secondary institutions **MAY** disclose, to parents of a student under the age of 21, information regarding violation of any Federal, State, local, or campus laws governing possession and/or use of drugs or alcohol.

Release of information regarding "crimes of violence" on college campuses.

OLD LAW: Information about the outcome of a "crime of violence" hearing may only be released to the victim (accuser).

NEW LAW: Information regarding any student found in violation of any campus policy that is considered a "crime of violence" as a result of a hearing **MAY** be released to anyone.

Institutions or individuals who have questions about either of these policy changes are urged to directly contact the Department of Education, Office of Family Policy Compliance at 202-260-3887 (voice) or 202-260-8965 (TDD). Regulations have not been issued by the U.S. Department of Education on the final implementation of the new laws.

Professional Counselor's Guide to Federal Law on Student Records

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Protecting the Confidentiality of Student Records

An Introduction

In pursuing their educational mission, elementary and secondary schools and institutions of higher education collect and maintain vast amounts of personal information about students and their families. Protecting the privacy of this information and ensuring that is used appropriately is both a legal and ethical imperative for professional counselors and others who work in educational settings.

The federal government has established strong and comprehensive laws which are intended to protect the privacy of the information that schools maintain about students. This publication outlines the requirements of the key federal laws and regulations which relate to student records, including:

- Family Educational Rights and Privacy Act
- Protection of Pupil Rights Amendment
- Individuals with Disabilities Education Act

Most states have also adopted laws and regulations relating to the confidentiality of student records, generally using the core privacy protections set out in FERPA as a starting point. In some cases, state laws include stronger provisions than those in federal law. A number of states and localities also have "open record" laws which may govern public access to some records maintained by schools.

It is important to consult with the offices of your state attorney general and state education agency to ensure that you have up-to-date information concerning state-adopted privacy protections and access requirements which apply to your institution.

In some cases, a state or local law may seem to conflict with the provisions of federal law and regulations. In this event, you should consult with a school administrator and school attorney for guidance. If the state or local law conflicts with the provisions of FERPA and prevents you from complying with FERPA's requirements, federal regulations require you to report the conflict to the Family Compliance Office of the U.S. Department of Education within 45 days. The Family Compliance Office may be contacted at:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue, SW
Washington, DC 20202-4605
(202) 260-3887 (voice)
(202) 260-8965 (TDD)

Federal laws and regulations can be confusing and there will inevitably be situations in which the application of the law is unclear. In these circumstances, it is best to err on the side of limiting access by third parties. The authors of *Protecting the Privacy of Student Records: Guidelines for Education Agencies* (1997, National Center for Education Statistics) advise:

> "When uncertainty occurs about when and with whom information should be shared, individuals in schools should act with caution and understand that their fundamental obligation is to maintain confidentiality. School personnel should never share with another individual – even a professional – more than is necessary to benefit the student. Legal counsel and school officials are available to interpret matters where privacy issues are involved. Teachers, paraprofessionals, and principals should not hesitate to consult these individuals when they are uncertain about their obligations or their responsibilities."

The ethical standards of the American Counseling Association and the American School Counselor Association also include provisions relating to confidentiality. These standards should also be considered when making decisions about the collection and disclosure of student information.

Family Educational Rights and Privacy Act

The most comprehensive federal statute governing the privacy of student records is the Family Educational Rights and Privacy Act (FERPA), popularly known as the Buckley Amendment, which was enacted in 1974. The purpose of FERPA is to protect the confidentiality of student records, to guarantee access to those records by parents and adult students, and to provide a means for parents and adult students to challenge the accuracy of the information included in student records. In general, FERPA:

- prohibits the disclosure or release to others of information included in student records without the signed written consent of parents or adult students except under certain limited circumstances
- gives parents and adult students the right to examine all information included in student records
- gives parents and adult students the right to request the amendment of records they believe to be inaccurate, misleading or "otherwise in violation of the student's privacy rights"
- requires education agencies and schools to inform parents and adult students of their rights under FERPA, how they may be exercised and other aspects of the agency's or school's policy on student records

The text of the law's implementing regulations is included at the end of this publication.

What Institutions Must Comply with FERPA?

FERPA applies to all education agencies and institutions that receive funding from the U.S. Department of Education. All public elementary and secondary schools, school districts, intermediate education agencies, and state education agencies typically receive some Department of Education funding in one form or another and are thus covered by the law. Few private elementary and secondary schools receive Department of Education funds directly and thus may be exempt from the law. They may, however, choose to establish voluntarily policies which are consistent with the law.

Most private and public colleges and universities are subject to the requirements of the law. FERPA coverage is triggered by the receipt of financial aid in any form by any part of the institution. Thus, even if the school does not directly receive grants or contracts from the Department of Education, it is subject to the law if its students receive federal loans or other financial aid for tuition.

How is FERPA Enforced and What are the Penalties?

FERPA is enforced by the Family Policy Compliance Office (FPCO) of the U.S. Department of Education. FPCO investigates complaints of FERPA violations and provides guidance to school officials on issues where the application of the law may be unclear.

Complaints that FERPA has been violated must be submitted in writing to FPCO generally within 180 days of the alleged violation, although the period may be extended if the complainant shows that events beyond his or her control prevented the timely submission of the complaint. The complaint must contain "specific allegations of fact" that provide "reasonable cause to believe" that FERPA has been violated.

If FPCO determines the complaint merits an investigation, it notifies the school or agency of the allegations contained in the complaint and requests a written response. Additional information may be subsequently requested throughout the investigation.

At the conclusion of the investigation, FPCO issues a written decision setting out its findings which is provided to both parties to the complaint.

If FPCO determines that FERPA has been violated, the decision specifies the steps the school must take to come into compliance with the law and the time period in which these steps should be taken. If efforts to obtain voluntary compliance fail, the U.S. Department of Education may:

- issue a cease-and-desist order to compel compliance
- withhold further payments that may be due an institution under a Department program
- prohibit the institution from participating in all Department programs

Voluntary compliance with the law has been extremely high. FPCO has never imposed any of these penalties against a school or other covered agency since the law's enactment in 1974.

Private lawsuits may also conceivably be used to enforce compliance with FERPA and to obtain damages for violations. FERPA itself does not authorize private litigation, but some federal courts have held that private litigation seeking compensatory damages could be brought under another federal statute (42 USC §1983). Other federal courts have ruled to the contrary. This is a rapidly-evolving area of the law that merits close attention.

What Documents Are Considered Student Records Under FERPA?

Under FERPA, an education record includes any information that is specifically related to an individual student which is maintained by the education agency or institution, or by individuals acting on behalf of the agency, such as an attorney and health and social services agencies. The definition is purposely broad and inclusive.

Education records include, but are not limited to:

- Personal and family information, including the name of the student, address, the name of the parent(s) or guardian(s), emergency contact information, date of birth, number of siblings, date and place of birth, social security number, picture or list of personal characteristics that would make it easy to identify a student
- Academic information, including grades, courses taken, schedules, dates of enrollment and information concerning attendance, bus routes, awards conferred, academic specializations, test scores and records (including answer sheets), and degrees earned
- Special education plans, evaluations, and other information related to the provision of special education services
- Disciplinary information
- Medical and health information, including immunization history

While most of the covered information about a student will generally be collected from the student, family members, teachers and professors, and other education professionals, it is important to note that information provided by other third parties, such as health care providers or assessment publishers, would also be considered part of a student record if this information is maintained by the agency or school.

The format in which the student information is maintained is immaterial under FERPA. The law applies to student information in all

formats, including personal handwriting, computer media, video or audio tape, film, microfilm, and microfiche.

Where the student information is maintained is also irrelevant; it does not apply solely to records maintained in a school's central administrative office or included as part of a student's permanent file. Student information collected and maintained by other school offices and by individual school employees are also subject to the law's requirements unless they fall within the exceptions that are outlined below.

It is important to note that FERPA does not require schools to create or maintain any specific information about a student. It applies only to information that they do collect and maintain. Not all schools may collect all the various types of information about a student that are outlined in the law and regulations. They have no obligation under FERPA to collect this information.

Nor are schools required to create a particular document that does not already exist in response to a request by a parent or adult student. Thus, for example, if a parent requests access to information relating to a meeting of school personnel about a particular student, the school is only required to grant access to the information if it already exists in written or other format. If there is no written documentation of the meeting, the school is not obligated to create a record of the meeting in response to the request.

What Documents Are NOT Considered Student Records Subject to FERPA?

Not all of the information collected and maintained by schools and school employees about students is subject to the access and disclosure requirements of FERPA. There are some important exceptions.

FERPA exempts five categories of information from the definition of "education records":

- Records made by teachers, supervisors, counselors, administrators, and other school personnel that "are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record"

- Records created by law enforcement units of schools or education agencies that are maintained separately from education records

- Records relating to an individual who is employed by an education agency or institution

- Records relating to a student who is 18 years of age or older or who is attending a postsecondary educational institution which are maintained "by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity" and which relate to the treatment provided the student

- Information obtained about individuals after they are no longer students

Sole Possession Records

The exemption of so-called "sole possession records" from the definition of education records is intended to protect from disclosure information that is recorded by a school employee as a basic memory aid. Many school professionals mistakenly believe that this exemption applies to any handwritten or other notes they may make in performing their responsibilities. This is not the case. There are very specific and narrow criteria information must meet in order to be considered a "sole possession record" exempt under the law.

To qualify for the exemption, the information must meet three requirements:

- the information must be a private note that is created solely by the individual possessing it

- the information must be a personal memory aid

- the information must not be shared or accessible to any other person except the individual's temporary substitute

These restrictions have important implications for school and college counselors.

FPCO has interpreted the "created solely by" requirement as excluding notes which record information that has been related by another party to a school employee. Private notes made by a counselor that record comments made by parents, students, or other school employees during a conversation, for example, would not qualify for the exemption and would be considered "education records" subject to the access and disclosure requirements of FERPA, even if these notes remained in the sole possession of the counselor. If, on the other hand, this information is not reduced to writing, it would not be subject to the access and disclosure requirements of the law.

This interpretation suggests that, in general, private notes made by a school counselor will only qualify for the "sole possession" exemption if they record personal observations about the behavior of students or conclusions the counselor has drawn on the basis of interactions with a student or others. Notes containing information about the substance of the interactions, particularly the content of conversations, would not be exempt.

Private notes made by counselors and others must meet additional qualifications as well if they are to be exempt from the law.

Counselors must maintain exclusive, personal control over these notes. The physical location of the notes is significant. In one case considered by FPCO, teachers provided their grade books to the school principal for maintenance in the school's central office. The grade books were sealed and locked in a storage cabinet by the principal and were only available to the teacher who created the record. Neither the principal nor any other school employee reviewed the grade books. FPCO ruled, however, that the grade books did not meet the criteria for a "sole possession record" exempt from disclosure because they left the exclusive control of the teacher. Although the principal did not review the grade books, she did have physical access to the records and could conceivably have reviewed them.

This ruling suggests that counselors who wish to protect their notes from disclosure should store them in a way that precludes others from having physical access to them, including other counselors. For example, if a counseling office maintains a central set of student files that are generally accessible to other counselors, the FPCO interpretation suggests that the information contained in these files would not qualify as a "sole possession record" and must be disclosed under FERPA.

Counselors may also not discuss with others the information contained in the notes if they wish the notes to remain exempt from disclosure. For example, if a counselor records an observation about the behavior of a student and then relates any of this information to a teacher or any other person orally, that portion of the notes which contains this information no longer qualifies as a "sole possession record" exempt from disclosure.

As this discussion should make clear, the "sole possession record" exemption is extremely narrow. Counselors should exercise great care in deciding what information they will reduce to writing about students and parents. In many cases, this information will be considered an "educational record" subject to FERPA's access and disclosure requirements, even if these written notes never leave their personal possession.

Law Enforcement Records

The purpose of the exemption of law enforcement records from FERPA's definition of an "education record" is to permit the free exchange of information needed to promote the safety of students and the public.

For the purposes of FERPA, a "law enforcement unit" is a separate department or office of a school which is responsible for enforcing federal, state, and local laws and/or maintaining the security and safety of a school. The employees of the law enforcement unit may be employees of the school or school district or they may be contractors with the school. A school may also designate a local police officer

or officers as a "law enforcement unit" under FERPA through a memorandum of understanding.

Information about students that is collected and maintained by "law enforcement units" are not subject to the requirements of FERPA. This means that these units are not required to give parents and adult students access to any information that may have been collected. It also means that units may share personally identifiable information about individual students with others without obtaining prior written consent from parents or adult students.

The records of a law enforcement unit are distinct from student disciplinary records maintained by a school, which are considered "education records" subject to FERPA. These disciplinary records may contain copies of incident reports and other information that has been provided by a school law enforcement unit. These copies are subject to the FERPA access and disclosure requirements. So long as they continue to be maintained by the law enforcement unit, however, the original documents are exempt from FERPA and may be shared with others by the law enforcement unit without obtaining prior written consent.

Employment Records

The employment records of all individuals who are not enrolled as students at a school are automatically exempt from FERPA's definition of an "education record."

The employment records of student employees whose jobs are related to "his or her status as a student" are not exempt and are considered "education records." Jobs that are related to a student's status generally must relate to the student's educational program. For example, the employment records of a student who works in a school cafeteria as part of a school-to-work program or those of a student employed as a teaching assistant for a course within their major would be considered "education records" for the purposes of FERPA.

The employment records of students who perform tasks unrelated to their educational program are exempt. State laws may, however, specify certain access and disclosure requirements relating to these records.

Health Records of Adult Students

The purpose of this exemption is to protect the confidentiality of health information maintained about a student who is age 18 or older or who is attending a postsecondary educational institution.

To qualify for the exemption, the information or record must:

- relate to a student who is at least 18 years of age or is enrolled at a postsecondary educational institution
- have been created or maintained "by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity"
- have been created and be maintained and used "only in connection with treatment of the student"
- be only disclosed to individuals providing the "treatment"

Generally, counseling which relates to mental and emotional problems qualifies as "treatment" under the definition and records relating to these activities would be exempt from FERPA. Records pertaining to career guidance and placement activities would likely not qualify for the exemption. Since career guidance may involve some aspect of psychological counseling and assessment, there is clearly no "bright line" which separates these activities from counseling interventions related to emotional and mental health problems.

Counselors are urged to consult with their school's attorney to obtain clearer guidance on the extent to which this exemption applies to their activities.

Counselors should also refer to state licensure and medical privacy statutes. These laws also contain restrictions on access and disclosure which may apply to the work of counselors.

It is important to note that information or records shared with individuals who are not providing counseling or treatment to a student do not qualify for exemption and are thus considered "education records" subject to the

FERPA access and disclosure requirement. Correspondence with professors, administrators and others concerning a student, for example, would not be exempt.

The health records exemption means that student do not have the right to directly inspect and review information which meets the criteria set out in the regulations. A student may, however, request that the information be reviewed by a physician or other health care professional of his or her choice. FPCO has provided little guidance on this point, but has suggested that a school may not withhold access to this third-party professional because the school does not believe that he or she possesses the qualifications necessary to properly evaluate and understand the information.

Who Has Rights Under FERPA?

The access and other rights established by FERPA are accorded to the parents of a student enrolled at a school. When the student attains the age of 18 or enrolls in a postsecondary educational institution, FERPA rights are transferred to the student.

The term "parent" is defined in the regulations as a "natural parent, guardian, or an individual acting as a parent in the absence of a parent or a guardian." An individual must be either a biological parent or have legal custodial rights over a child to exercise the parental rights provided by FERPA.

Where parents are divorced or separated, both parents have access and other rights under FERPA. Custody and other residential arrangements for a child have no bearing on a parent's rights. FPCO has advised that a school may only deny access to a non-custodial parent if a court order has been issued which "specifically prohibit[s] access to education records." Even if one parent objects to access by the other, a school must grant access unless a court order of this kind has been issued.

Step-parents and live-in companions and relatives of biological parents do not have parental rights under FERPA unless a court has given them custodial rights over a child. The biological parent may, however, grant a step-parent or others access rights under FERPA by completing a written authorization to this effect.

Under formal foster care arrangements, the rights of the biological parent have been suspended or terminated by a court. Foster parents may thus exercise the rights of a parent under FERPA. In the case of more informal arrangements in which a sibling or grandparent is temporarily caring for a child, a written authorization from the biological or custodial parent is required before these individuals may have access to education records.

Parental rights under FERPA are transferred to a student when he or she reaches the age of 18 or enrolls in a postsecondary educational institution. Throughout this publication, students who meet this definition are referred to as "eligible students." FERPA permits but does not require schools to continue to grant access and other rights to parents if the older student is declared as a dependent on the parent's most recent federal income tax form. A school should establish a policy on this issue and include it in its overall FERPA policy. Proof of the student's dependent status should always be obtained before parental access is granted.

Some advanced placement, Tech-Prep, and other students may be simultaneously enrolled in a secondary and postsecondary educational institution. If the student is a minor, he or she has access rights under FERPA to education records maintained by the postsecondary educational institution but not to those maintained by the secondary school.

If a student dies before the age of 18, the parent retains rights under FERPA indefinitely. If the student dies after his or her 18th birthday, all rights under FERPA are terminated. The rights do not revert to the parent. A school may establish whatever policy on disclosure it deems appropriate in these instances. This could include requiring parental consent for the disclosure of information concerning deceased "eligible students."

When May Student Records Be Disclosed to Others?

In general, education records may not be disclosed to others by a school unless a parent or "eligible student" gives written consent for the disclosure. The signed and dated consent form should specify the particular records that may be released, the purpose of the disclosure, and the identity of the individual to whom the records are to be released.

In giving consent, it is permissible for a parent or "eligible student" to require that the school provide him or her with copies of all of the documents that are released to the third-party.

Consent to disclosure may not be granted over the telephone or by email. It is up to the school to determine whether it will accept signed consent forms that are transmitted via facsimile machine.

FERPA does permit information to be disclosed without consent in a number of different circumstances. These include:

- to share rudimentary "directory information" about a student
- to share information with other school employees who have a "legitimate educational interest"
- to other institutions to which the student has transferred or applied for admission
- to government auditors and other officials responsible for monitoring compliance with legal requirements
- in connection with a student's application for financial aid
- to state and local juvenile justice officials if authorized by state law
- to accreditation bodies
- to researchers for validating assessments and for other purposes
- in response to a court order or subpoena
- in emergency and crisis situations
- to share student disciplinary information with officials at other schools in some circumstances
- to share the results of disciplinary proceedings with the victims of violent crime committed at postsecondary educational institutions

Disclosure in these instances is permissive rather than mandatory. A school is not required to disclose the information in each of these situations. It is up to each school to determine whether and to what extent they will utilize these exceptions to the consent requirement.

Directory Information

FERPA permits schools to release "directory information" about students without prior written consent. The regulations define "directory information" as "information contained in an education record of student which would not generally be considered harmful or an invasion of privacy if disclosed" and lists the following types of information as examples:

- name, address, telephone, and date of birth
- major field of study
- participation in officially recognized activities and sports and, for members of athletic teams, weight and height
- dates of attendance, degrees and awards received
- most recent previous education agency or institution

Each school is given discretion to determine what student information will be considered "directory information" that may be released without consent. It is not required to include all

of the types of information listed in the statute and regulations. It may also include additional information provided that its release "would not generally be considered harmful or an invasion of privacy." Some schools include information and materials that are contained in the school yearbook, for example, including pictures of the student.

"Directory information" may only include information pertaining to the student and not information relating to the parent. For example, while in many cases the address and telephone number of a student and parent will be the same, in some cases a parent may reside at a different address. The address of this parent may not be included as "directory information."

The school must give notice to parents and "eligible students" of the categories of information that it has designated as "directory information" which will be released without consent. This notice can be included as part of the annual general notice of FERPA rights the school is required to provide.

Individual parents and "eligible students" may refuse to permit any or all of this "directory information" to be released without their consent. This objection must be stated in writing. The school is required by FERPA to honor this request.

Nondisclosure requests may only be made while a student is currently enrolled. Schools are not required to comply with nondisclosure requests that are filed after the student has transferred to another school or has graduated. A nondisclosure request concerning directory information remains in effect until it is rescinded in writing.

Sharing Information With Other Educators

Personally identifiable information about students may be shared without consent with "other school officials, including teachers, within the agency or institution whom the agency or institution has determined have legitimate educational interests". School officials may include school employees and individuals providing services to the school on a contract basis, as well as elected members of a school board.

The law and regulations authorize each institution to establish its own criteria for determining the categories of school officials with whom information may be shared and the definition of what constitutes a "legitimate educational interest."

It should be emphasized that merely because an individual is a school employee does not mean that student information may be freely shared with him or her without consent. The individual must also have some logical need or use for the specific information in carrying out their school responsibilities. The custodian of the student information must determine the legitimacy of a colleague's request for the information.

Establishing a written school policy on this issue is strongly recommended. The following is a sample policy recommended in *Protecting the Privacy of Student Records* (NCES 1997):

> "A school official is determined to have legitimate educational interest if the information requested is necessary for that official to:
>
> a) perform appropriate tasks that are specified in his/her position description or by a contract agreement;
>
> b) perform a task related to a student's education;
>
> c) perform a task related to the discipline of a student;
>
> d) provide a service or benefit relating to the student or student's family, such as health care, counseling or job placement."

Information that is shared with another school employee under the "legitimate educational interest" exception remains subject to all of the other access and disclosure requirements of FERPA. It may only be shared with a third party who is not a school official with the written permission of a parent or "eligible student" or pursuant to another exception included in the law and regulations. Prudent practice dictates that the school official receiving the information either destroy or return it when he or she no longer has a need for the information.

Special Issues

Oral Disclosures Of Information Based On Personal Observation

FERPA restricts the non-consensual disclosure of information that is contained in student records. It does not restrict school employees from orally disclosing to others information about a student that is derived solely from their independent personal observation or knowledge of a student.

For example, if a school counselor is approached by a child protection agency worker who is investigating a report of child abuse, the counselor may share any information about the behavior of the student that is based on his or her observation or knowledge of the student. This information may not, however, reference or be derived from the contents of the student's record, such as the student's recent academic performance. It must be based on personal observation.

Similarly, a counselor who believes, based on his or her observation, that a student is involved in a gang may report this suspicion to law enforcement officials without prior consent. If, on the other hand, the suspicion is based upon a written report received from another school employee, it may not be disclosed without consent.

Special Issues

Parental Access to Documentation of Child Abuse Reports

School counselors and other school employees are required by state law to report suspected cases of child abuse to state child protection authorities. In order to document their compliance with this mandate, schools typically create a written record of the report which may include information about the basis for the reporter's suspicion and other related issues. This documentation is considered an education record for the purposes of FERPA and is subject to the law's access and disclosure requirements. A parent may, in other words, ask to review the document.

A school must comply with this request. However, it is not obligated to provide access immediately; the regulations require that access be given within 45 days of the request. Furthermore, FPCO has stated that schools may delete the name of the school employee who initiated the report from the documentation that is shared with a parent.

Transferring Student Records to Another School

When a student transfers to or seeks to enroll in another school, a school may disclose the student's education records to the new school without obtaining prior written consent if the school follows three procedural requirements:

- **It makes a reasonable effort to notify the parent or "eligible student."** This notification need not be made on an individualized basis. A simpler approach is to include a sentence in the general FERPA notification that is disseminated annually to parents and "eligible students" which specifies that non-consensual disclosures will be made under these circumstances.

- **It provides a copy of the records to a parent or "eligible student" upon request.** The school is not obligated to automatically share copies of the records with the parent or "eligible student." Copies of the records must be formally requested.

- **It provides an opportunity for the parent or "eligible student" to request a hearing on the accuracy of the records prior to the transfer.** The procedural requirements for and, parameters of, FERPA hearings are outlined on page 22.

It is not uncommon for parents to request that some information in a student's records be withheld from the new school. Nothing in FERPA prohibits a school from acceding to requests of this kind, but it is not a recommended educational practice.

If you found it useful to record certain information about a student in performing your responsibilities, this information is likely to be useful to the employees of the transfer school as well. Parents may utilize the FERPA hearing procedures to challenge the information if they believe it is inaccurate, misleading or invasive of the student's privacy.

Disclosing Information for Audit and Compliance Purposes

Personally identifiable student information may be shared without consent with "state and local education authorities," the U.S. General Accounting Office, and the U.S. Department of Education "in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs."

These officials may not share personally identifiable information about individual students with others outside the agency. They must also destroy the information after it is no longer needed.

FPCO has narrowly interpreted the term "state and local education authorities" to include generally only officials of state and local education agencies. The term does not include elected officials who serve on state legislative committees with jurisdiction over education issues. Nor does it include other state agencies with related missions, such as state departments of labor or social services, unless the state education agency has specifically delegated one or more of its responsibilities to the non-education agency.

Student Applications for Financial Aid

A school is permitted to disclose student records to others without written consent "in connection with [an] application for financial aid for which the student has applied or has received." The financial aid must be related to attendance at an education agency or institution.

The types of information that might be requested by another party to assist in aid determinations could include student grades, academic and athletic honors, and attendance records.

Sharing Information with Juvenile Justice Agencies

It is permissible under FERPA for a school to disclose without written consent information contained in student records to state or local juvenile justice authorities if three conditions are met:

- the disclosure has been specifically authorized by a state law
- if the law was enacted after November 19, 1974 (the date FERPA was enacted), the disclosure must relate to the juvenile system's "ability to serve, prior to adjudication, the student whose records are being released"
- the state or local officials to whom the records are released agree in writing that the records will not be disclosed to any third party outside the juvenile justice system

State and local juvenile justice authorities could include local law enforcement officers, state and local district attorneys, departments of probation, court officers, and other agencies and officials.

In recent years, a number of states, including California, Florida, and Wisconsin among others, have enacted laws which authorize information-sharing among educational institutions, juvenile justice authorities, and social service agencies. The purpose of the information-sharing is to improve the quality of juvenile justice adjudication decisions and the services provided to youth who are delinquent or at risk of delinquency. Information about a student's academic performance, attendance, and disciplinary record is useful to juvenile justice authorities in determining how to respond to an alleged act of delinquency by a young person. Information about students with poor attendance records or who have exhibited persistently disruptive behavior in school may also be useful in developing delinquency prevention strategies and interventions. The regular exchange of information between schools and juvenile justice authorities may also be necessary to monitor effectively the rehabilitation of a youth released on probation.

For more information about the extent to which this juvenile justice exception applies to your school, please consult with the office of your state's attorney general, a school administrator, school attorney, or others who are familiar with the laws in effect in your state.

Providing Access to Student Records to Accrediting Bodies

FERPA permits schools to disclose without consent personally identifiable information about students to accrediting organizations "in order to carry out their accrediting functions."

The purpose of this exception is to enable accrediting bodies to examine student records as part of their review of whether an institution meets or has complied with accreditation standards.

Disclosing Student Records for Test Validation and Other Research Purposes

Schools are authorized by FERPA to provide access to student records without consent to "organizations conducting studies for, or on behalf of, educational agencies or institutions to (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction."

Researchers attempting to develop or validate assessments or to evaluate the effectiveness of educational programs will often require access to personally identifiable information about students in order to undertake their research. The purpose of this exception is to enable schools to disclose this information to outside organizations if they opt to do so.

Establishing a school or district policy on external research requests for student information is strongly recommended. In determining whether to grant the request, a school should consider the credibility and credentials of the organization or individual making the request, the quality of the research design, the potential value of the information to

the school and educators in general that may result from the research, and whether the research could be carried out in a manner that did not require the disclosure of the names and other personally identifiable information about students. It should be emphasized that schools are not required to grant any request for student records by outside researchers. Granting access is completely at their discretion.

Researchers to whom student information is disclosed may not share the information with others who are not engaged in the research. They must also destroy the information after the research has been completed.

If FPCO determines that a research organization has shared personally identifiable student information with others not engaged in the study, it may issue an order barring the organization from obtaining access to student records for a minimum of five years.

Responding to a Court Order or Subpoena

Student records may be released without consent in response to a "judicial order or pursuant to any lawfully issued subpoena" provided that the school gives the parent or "eligible student" advance notice of its intent to comply with the subpoena.

Subpoenas may be issued as part of a criminal investigation by a district attorney or other law enforcement officer or by an attorney representing a party in a civil or criminal court action. Other federal, state, and local agencies have been provided subpoena power by their authorizing statues. FPCO, for example, has advised that an Internal Revenue Service summons should be considered comparable to a subpoena for the purposes of FERPA.

Before complying with the subpoena, a school should verify that the document is a valid subpoena and that the school is within the jurisdiction of the court that issued the subpoena. A Wyoming state court, for example, does not have jurisdiction over a school in Iowa and the school is not compelled to respond.

If the school plans to comply with the subpoena, FERPA generally requires the school to make "reasonable efforts" to notify a parent or "eligible student" of its intent prior to disclosing student records. "Reasonable" is typically considered advance written notice of at least ten working days.

The purpose of this notice requirement is to give a parent or "eligible student" an opportunity to challenge the subpoena in court. In many cases, subpoenas are not reviewed by a judge prior to being issued. A parent or "eligible student" may be able to convince a court to modify or quash the subpoena.

To maintain the secrecy of criminal investigations, in 1994 Congress amended FERPA to permit subpoenas issued by federal grand juries or other subpoenas issued for "law enforcement purposes" to include provisions which bar schools from giving a parent or "eligible student" prior notice. In these cases, a subpoena may direct the school not to reveal that the subpoena has been issued and the records that are being sought. FERPA permits a school to comply with this "gag order."

In instances in which a school has initiated legal action against a parent or "eligible student", it is not required to obtain written consent to disclose in court any student records that are relevant to the litigation. It must, however, provide "reasonable" advance notice to the parent or "eligible student" of its intent to make the disclosure.

When a parent or "eligible student" initiates legal action against a school, the school may disclose student records relevant to mounting a defense without consent or notice. FPCO has stated that the initiation of the lawsuit may be considered by the school to be "implied consent" to the disclosure of student records.

It should be emphasized that "implied consent" is only given when legal action has been initiated against the school. When a parent or "eligible student" makes a public accusation of misconduct against the school but does not file a lawsuit, the school remains bound by the FERPA restrictions on disclosure. School officials can, however, publicly encourage the parent or "eligible student" to sign a written consent form to permit the school to respond.

Disclosing Information In Emergency Situations

FERPA authorizes the disclosure of student records without consent in certain emergency and crisis situations.

The regulations provide for the release of student information "to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals."

As a publication produced by the U.S. Departments of Education and Justice explained, this exception "is a commonsense acknowledgment that there may be situations when the immediate need for information to avert or diffuse certain unusual conditions or disruptions requires the release of information." (*Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs*, 1997). One example of a situation in which the emergency exception might be used is a request from a public health agency that the school identify classmates of a student who has been diagnosed with a deadly, airborne communicable disease.

Schools are given substantial discretion in determining whether a particular situation is a legitimate health and safety emergency that merits the non-consensual disclosure of student information. Until 1988, federal regulations set out four criteria that schools should use in evaluating whether a situation falls within the statutory and regulatory definition of an emergency:

- the seriousness of the threat to the health and safety of the student or other individual
- the need for the information to address the emergency
- whether the parties requesting the information have the authority or are in a position to deal with the emergency
- the extent to which time is of the essence in contending with the emergency

The U.S. Department of Education deleted these criteria from the regulations in 1988, stating that "educational agencies and institutions are capable of making those [emergency] determinations without the need for Federal regulation." Schools may continue to use the criteria, however, and may find them helpful in evaluating specific situations.

It should be emphasized that the exception is provided for emergency situations only. Not all requests from law enforcement officials and others will be legitimate emergencies for which this exception may be used. For example, a request from a police officer to examine the records of a student suspected of shoplifting would not qualify as an emergency without some showing by the officer that there was an imminent health or safety threat posed to the student or others that could only be averted by providing access to the information. In this situation, the officer should secure a subpoena for the records.

Disclosing Disciplinary Information to Employees of Other Schools

The transfer of a student to another school and health and safety emergencies are among the circumstances in which a school may share student information with the employees of another school without obtaining prior consent under FERPA. Oral disclosures of personal observations are also permitted. Records maintained by a school's law enforcement unit are not subject to FERPA and may be freely shared as well.

In 1996, Congress amended the law to authorize the non-consensual disclosure of some disciplinary information to the employees of another school under additional, limited circumstances.

The amended law and regulations permit a school to disclose without consent information contained in a student record which relates to "conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community" to teachers and other school officials at another school who "have legitimate educational interests in the behavior of the student."

For example, if a student with a history of violent behavior that had resulted in disciplinary action began spending time after-school at events hosted by another school, employees of the student's school could brief officials of the other school about the student's past behavior problems without obtaining prior consent.

Disclosing the Results of Disciplinary Proceedings to Victims of Violent Crime at Postsecondary Educational Institutions

When a student enrolled at a postsecondary educational institution has been accused of committing a violent crime, FERPA permits the institution to provide to the student's accuser without consent the "results" of any disciplinary action taken pursuant to the accusation.

The purpose of this exception is to enable alleged victims of violent crimes to learn how their complaints against a student have been addressed and adjudicated by a postsecondary educational institution.

FERPA defines violent crime broadly as:

> "(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense"

Rape, armed robbery, assault, attempted murder, and murder are among the offenses that would be considered violent crimes for the purposes of FERPA.

It should be emphasized that the non-consensual disclosure of the results of disciplinary proceedings may only be made to the alleged victim of the crime, and not to the general public.

Documenting Non-Consensual Disclosures

FERPA regulations require schools to maintain a record which documents requests for the non-consensual disclosure of student information and the disposition of each request.

Documentation is not required when disclosures are made in the following instances:

- to another educator or official within the school system who has been determined to have a "legitimate educational interest" in the contents of a student record
- to a third-party who has been given written consent by a parent or "eligible student"
- to a third-party who requests "directory information"
- in response to a subpoena issued by a federal grand jury or for other law enforcement purposes which directed the school not to disclose the subpoena

For all other non-consensual disclosures, the school must maintain a written record which includes:

- the identity of the party making a request for a non-consensual disclosure
- the "legitimate interest," if any, of the party making the request in the information
- the identities of any additional parties to whom the requested information may be redisclosed and the "legitimate interest" of each such party in the information
- the information, if any, provided in response

Documentation must be made of all requests for non-consensual disclosure and not merely those requests which were granted.

This log must be maintained with the student's education records. It may be inspected and reviewed by parents and "eligible students" just like any other information contained in the student record.

What Rights Do Parents and Students Have to Review Education Records?

FERPA gives parents the right to inspect all information maintained by a school pertaining to their child which meets the statutory and regulatory definition of "education record." This access right is transferred to the student when he or she reaches age 18 or enrolls in a postsecondary educational institution. The school is required to grant access to the requested information within 45 days of its receipt of the request. It is prohibited from destroying any information which a parent or "eligible student" has asked to review while the request is pending.

It should be noted that this access right is limited solely to information pertaining to the child of the parent or to the "eligible student." If an education record includes information about more than one student, the information must be segregated or modified in a way that conceals the identity and personally identifiable information about the other student(s) before access is provided.

A school is not required to honor a "standing" request from a parent or "eligible student" that it provide access to, or copies of, all information that is added to an education record throughout the year. If parents or "eligible students" wish to obtain this information on a regular basis, they may submit review requests on a regular basis.

Neither the law nor the regulations require that review requests by parents and "eligible students" be made in writing, but it is in the best interests of all parties that some written documentation of the request be made. A sample form that may be used for this purpose is included on page 19. A sample form that may be used to respond to the request appears on page 20.

A school is only required to provide copies of education records when "failure to do so would effectively prevent the parent or student from exercising the right to inspect the records." Copies might be provided, for example, in response to a request from a non-custodial parent who resides several hundred miles away from the school or from a parent whose illness or employment precludes reviewing the records in person. A school may provide copies to parents in other circumstances at its discretion.

When providing copies, the school may recover the associated reproduction and postage costs by charging a "reasonable" fee. The labor costs of searching for and retrieving the records may not be recovered. A fee may not be charged, however, if it would "effectively" prevent a parent or "eligible student" from exercising their rights to inspect and review the records.

The National Center for Education Statistics publication *Protecting the Privacy of Student Records: Guidelines for Education Agencies* recommends that a single staff person be designated to assist a parent or student while they are reviewing requested educational records. The responsibilities of this staff person could include:

- Verifying the identity of the individual
- Explaining the legal requirements, as well as school policies, that protect the confidentiality of the contents of the records
- Remaining present in the room to provide assistance in understanding the contents of the records and to ensure that all records are returned without amendment

In the event that the parent or "eligible student" brings another party, such as a friend or an attorney, to review the records as well, the parent or student should be asked to sign a written consent form to permit the individual access to the record. A sample form that may be used for this purpose appears on page 21.

At the conclusion of the review, the parent may be asked to sign a form which acknowledges that the review has taken place.

Sample Request to Review an Education Record

Date: _____

To: [*Name of Designated School Official*]

From: _____
[*name of parent*]

_____

_____
[*address*]

_____
[telephone number]

Under the provisions of the Family Educational Rights and Privacy Act of 1974 and [*insert any applicable state/local laws or regulations*], I wish to inspect the following education record:

_____

_____

_____

of _____ who attends _____.
[*name of student*] [*name of school*]

Requester's Relationship to Student: _____

I do ____/do not _____ desire a copy of such records. I understand that a reasonable fee will be charged for the copies.

_____
[*Signature*]

Adapted from *Protecting the Privacy of Student Records: Guidelines for Education Agencies* (NCES, 1997)

Sample Response to Parent/Student Request to Review an Education Record

Date: _____

To: _____
[*name of parent*]

From: [*name of designated school official*]

Your request for review of your/your child's record was received on [*date*]. The request was approved.

___ The record will be available at the following office for review on _____.
[*date*]

[*name and address of office, including room number and contact person*]

___ As you requested, copies of the record will be mailed to you upon receipt of the copying fee of [*amount*]. Please forward your check payable to [*appropriate agency*] at [*agency address*].

Please contact [*name*] of [*office*] at [*telephone number*] should you have any questions regarding this notice.

_____
[*signature of designated official*]

• • • •

Sample Consent Form to Permit Accompanying Person to Review an Education Record

For use by parent or eligible student to grant consent

I hereby grant permission for _____ to accompany me today during my review of my/my child's education records. I understand that in doing so, the information maintained in the education records, otherwise protected by the Family Educational Rights and Privacy Act [*and other applicable local or state laws*], may be disclosed with my consent to the above named.

_____

[*signature*]

_____

[*name*]

_____

[*date*]

• • • •

What Rights Do Parents and Students Have to Challenge the Contents of Student Records?

FERPA also gives parents and "eligible students" the right to challenge any information contained in an education record which they believe to be "inaccurate, misleading, or in violation of the student's rights of privacy" and request that the information be deleted or appropriately amended.

Information may be challenged either in writing or orally. A school is not required to document the request in writing but, depending upon the nature of the request and the situation, it may find it prudent to do so. A sample form that may be used for this purpose appears on page 24.

Federal regulations, non-regulatory policy letters issued by FPCO, and judicial interpretations provide little guidance as to how to evaluate whether information is "inaccurate, misleading, or in violation of a student's rights of privacy," giving schools broad discretion in making this determination.

A prudent approach is to consider any state or local policies relevant to the request, such as a state law which may prohibit removing some information from a student record, and to rely on basic principles of fairness and common sense. A school should also seek to ensure that the request is not prompted by a misunderstanding about the meaning or use of information that is contained in a student record.

Statements of opinion and narrative descriptions and assessments of a student's social and academic growth are the among the types of information that are most likely to provoke a challenge. In general, challenges to the accuracy of information contained in a student record can be minimized if school professionals:

- include only information that is useful or necessary in providing for the child's education
- use specific examples to illustrate descriptive statements about a student
- exclude unverified allegations
- use precise words and terms that will be readily understood by other professionals
- exclude value-laden adjectives and adverbs

The school must respond to a request to amend a student record within a "reasonable" period of time, informing the parent or "eligible student" whether and how, if at all, it will amend the record to address the concerns which prompted the request. If the school denies the requested change, the parent or "eligible student" must be given an opportunity to challenge the decision in a hearing. Information about this right and how to exercise it should be included in the written response the school provides to the request for a change in the student's records.

A sample response letter is reproduced on page 24.

When a parent or "eligible student" chooses to request a hearing to challenge a record considered misleading, inaccurate, or invasive of privacy, the school must provide written notice of the date, time, and location of the hearing "reasonably in advance" of the hearing date to enable the parent or student to prepare. A sample hearing notice appears on page 25.

The hearing must be presided over by an individual who does not have an interest in the outcome. This hearing officer may be another school employee. During the hearing, the parent or student may present any evidence which may support his or her contention that the record is misleading, inaccurate, or invasive of a student's privacy. An attorney or other individuals may assist the parent or student in presenting this evidence at their expense. Relevant school employees may present evidence which supports the accuracy or appropriateness of the record during the hearing.

The hearing officer must make a decision on the merits of the challenge "solely on the basis

of the evidence presented at the hearing." The decision should be communicated in writing to the parent or student. The evidence presented at the hearing should be summarized in this document and the reasons for the decision clearly outlined.

If the hearing officer rejects the request for an amendment to the record, the parent or "eligible student" must be given an opportunity to place in the student record a statement which comments on the contested information or sets out the reasons he or she disagrees with the decision not to amend the information. This statement must be maintained with the contested part of the student record as long as it is maintained by the school. Should the contested information be disclosed to others, the statement must be included as part of the disclosure. The school is not permitted to edit the statement.

A school may, at its discretion, choose to permit a parent or "eligible student" to place a statement of this kind in the student record without going through a formal hearing process.

What Limitations Does FERPA Impose on the Retention of Student Records?

FERPA is generally silent on the issue of how long schools must retain student records. Its only requirement related to record retention is a prohibition against the destruction of any information contained in a student record that a parent or "eligible student" has asked to review while the request is pending.

Student record retention policies are instead governed by state and local laws which vary widely across the country. Federal laws may also apply in some case. The federal General Education Provisions Act requires recipients of assistance from the U.S. Department of Education to maintain records "for three years after the completion of the activity for which the funds are used." The Individuals with Disabilities Education Act imposes additional restrictions on the retention of records relating to students with disabilities determined to be eligible for services under that Act. These restrictions are outlined on page 31.

What Must Schools Tell Parents and Students About Their Rights Under FERPA?

Educational institutions subject to FERPA must inform parents and "eligible students" annually of the rights that are guaranteed to them under FERPA. Notification need not be made on an individual basis. It may instead be published in a student handbook, parent newsletter, or "by any means that are reasonably likely to inform the parents or eligible students of their rights."

The statute and regulations further stipulate that notification must be made "effectively" to parents and "eligible students" who have a disability or whose primary language is not English. This requirement may be satisfied by translating the notice into other languages, including Braille; making the notice available on audiotape, in large print, or in electronic formats that are compatible with assistive technology devices; or using interpreters to relay the information to a parent or "eligible student" at the time of registration.

The notification must include information about the following:

- the right to inspect and review student records and the procedure for exercising this right
- the right to request an amendment to student records and the procedure for requesting such an amendment

Sample Request to Amend an Education Record

To: [*name of designated school official*]

From: [*name of parent/student*]

Date: _____

I have reviewed my/my child's education record and believe it contains information that is inaccurate, misleading, or in violation of my/ my child's privacy rights. Please amend the record as follows:

_____

[*signature*]

_____

[*address*]

Sample Notification of Approval/Disapproval of Request for Amendment

From: [*name of designated school official*]

To: [*name of parent/student*]

Date: _____

Your request for amendment of your child's/your education record was received and reviewed.

___ The request was approved and necessary changes are made to the specified record as requested.

___ The request was denied because _____. However, you are entitled to a hearing concerning your request. If you decide to request a hearing, please notify the following office within [*number of days specified by state or local policies*]:

[*contact person*]

_____

[*signature*]

Sample Notice of Hearing on Parent/Student Request for an Amendment to Education Records

From: [*name of designated school official*]

To: [*name of parent/student*]

Date: _____

We have received your request to schedule a hearing for the purpose of challenging the contents of your/your child's education records. A hearing is hereby scheduled as set out below:

___ The hearing is scheduled at:

[*date*]
[*time*]
[*location*]

If you cannot be present on the above date, please contact my office as soon as possible to establish a mutually convenient date.

___ The hearing is rescheduled at:

[*date*]
[*time*]
[*location*]

You shall have a full and fair opportunity to present evidence relevant to the issues you have raised regarding your/your child's education records. You also may be assisted or represented by individuals of your choice, including an attorney at your expense. The decision will be based exclusively on the evidence presented at the hearing.

Please do not hesitate to contact me if you have any questions.

_____

[*signature*]

[*name*], [*title*]
[*address*]
[*telephone number*]

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Adapted from *Protecting the Privacy of Student Records: Guidelines for Education Agencies* (NCES, 1997)

- the requirement that consent be given prior to the disclosure of information contained in student records except in instances where the law and regulations permit non-consensual disclosure

- the right to file a complaint with the U.S. Department of Education alleging that FERPA rights have been violated

- an explanation of the criteria the school, district, or agency uses to determine whether an individual is a "school official" who has a "legitimate educational interest" in accessing a student record without consent

Model notifications have been developed by FPCO for both elementary and secondary schools and postsecondary educational institutions. These model notices appear on pages 27 and 28.

FERPA also requires that notice be given of the "directory information" that a school will disclose without consent and describe how a parent or "eligible student" may object to the disclosure of some or all of this information, specifying a time period in which this objection must be made. This notice may incorporated in the general FERPA notification of rights. It may be useful to include additional information about an institution's FERPA policies and procedures as part of the annual notice as well.

How Does FERPA Apply to Student Records Maintained by State Education Agencies?

Prior to 1994, FERPA did not apply to student records maintained by a state education agency. These records are typically far more limited than those maintained by local school districts and individual institutions and may include results of state student assessments and information about student participation in school-to-work programs.

Congress amended the statute in 1994 to permit parents and "eligible students" to inspect and review any student records that may be maintained by state education agencies. Subsequent regulations issued by the U.S. Department of Education require state agencies to meet the same parent and student access requirements as local agencies and institutions, including granting access within 45 days of a request, providing copies of records when necessary, and charging fees for copies when appropriate.

No other provisions of FERPA apply to student records maintained by state education agencies.

Special Issues for Postsecondary Institutions

Student Access to Parent Income Data

FERPA permits postsecondary educational institutions to deny an enrolled student access to records which contain financial information pertaining to the student, including, particularly, information about the income and financial status of the student's parents that may have been collected for financial aid purposes. This exception is discretionary rather than mandatory. A school is not required by FERPA to block student access to this information.

Model Notification of Rights Under FERPA for Elementary and Secondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records.

These rights are outlined below:

1. The right to inspect and review the student's education records within 45 days of the day the District receives a request for access. Parents or eligible students should submit to the school principal [*or appropriate school official*] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading. Parents or eligible students may ask Alpha School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent. One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.[*Optional*] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll.

[NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by Alpha School District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4605

[NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records.

These rights include:

1. The right to inspect and review the student's education records within 45 days of the day the University receives a request for access. Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

2. The right to request the amendment of the student's education records that the student believes are inaccurate or misleading. Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

3. The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent. One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. [*Optional*] Upon request, the University discloses education records without consent to officials of another school in which a student seeks or intends to enroll.

[NOTE: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless the institution states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by State University to comply with the requirements of FERPA.

[NOTE: In addition, an institution may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]

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Special Issues for Postsecondary Institutions

Student Access to Admissions Records

FERPA does not apply to admission records until a prospective student is accepted and enrolls at an institution. If the institution retains admission records relating to the student after his or her enrollment, they are considered "education records" under FERPA and are subject to the law's access and disclosure requirements. Records relating to students denied admission may not be accessed by rejected candidates under FERPA.

If retained by a school after a student's enrollment, letters of recommendation submitted as part of the admission process are also considered "education records" which may be accessed by a student. However, it is permissible under FERPA, as well as a common and accepted practice, to request that a prospective student waive his or her FERPA access rights to review these documents. A school may not require that a student complete a waiver as a condition of admission or for receipt of any other benefit. This waiver must be in writing and signed by the student.

Even if a student has signed a waiver, FERPA does require the institution to provide to the student, on request, a list of the names of the individuals who submitted letters of recommendation.

A student may subsequently revoke a FERPA waiver by submitting a signed letter to this effect to the institution. This revocation applies only to letters of recommendation received after the revocation has been filed. It does not permit the student to review letters which may have been received while the waiver was in effect.

Special Issues for Postsecondary Institutions

Withholding Transcripts Pending the Discharge of Debt

Many institutions withhold official copies of academic transcripts from students who have outstanding debts. This practice is permissible under FERPA, provided the student continues to be permitted to inspect and review his or her "education records."

Protection Of Pupil Rights Amendment

The Protection of Pupil Rights Amendment (PPRA) imposes additional parental consent and access requirements upon institutions and individuals who use U.S. Department of Education funds to carry out certain kinds of research. The law was amended by Congress in 1994. Proposed regulations were issued in 1995, but the Department of Education has not yet promulgated final regulations. In the interim, schools may use the 1995 proposed regulations to guide their compliance with the law. The text of the regulations appears on page 47.

Research Activities Covered by PPRA

PPRA applies to any survey which:

- is developed or administered using Department of Education funds; **and**
- is administered in an elementary and secondary school (public or private); **and**
- asks a student to reveal information concerning:
  - political affiliations
  - mental and psychological problems potentially embarrassing to the student and his or her family
  - sex behavior and attitudes
  - illegal, anti-social, self-incriminating and demeaning behavior
  - critical appraisals of other individuals with whom respondents have close family relationships
  - legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers
  - income, other than that required by law to determine eligibility for a program

Parental Access to Surveys and Related Materials Required

Entities administering a survey subject to the requirements of the law must, on request, give parents an opportunity to inspect the survey and any related instructional materials. As with FERPA, access must be granted within 45 days of a request. The materials may not be destroyed while a request is pending.

Parents do not have the right to personal copies of the requested documents. Schools and researchers may provide copies at their discretion.

Prior Written Consent Required

No student under the age of 18 may be required to participate in a survey subject to the law without prior written consent from a parent or guardian. If the student is not a minor or is an emancipated minor, the student must provide prior consent.

Notification of Rights Required

All local education agencies which receive assistance from the U.S. Department of Education must notify the parents of students annually of the rights guaranteed them by PPRA. This notice may be incorporated in the general FERPA notice that schools must annually provide. The notification must be provided in a manner that "is reasonably likely to inform" parents with disabilities or whose primary language is not English.

Enforcement

PPRA is enforced by the Family Policy Compliance Office of the U.S. Department of Education. The penalties for violation are the same as those for FERPA violations, *e.g.*, ineligibility for Department of Education funds. Parents and students may file written complaints alleging violations within 180 days of their occurrence.

Individuals With Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) imposes requirements on the use and disclosure of personally identifiable information contained in the records of students who have been determined to be eligible for services under the Act. These requirements generally incorporate the basic provisions of FERPA but include additional protections to safeguard the privacy of students with disabilities and their parents.

The text of the relevant IDEA regulations can be found at the end of this publication.

Enforcement by State Agencies

As with the other provisions of IDEA, the student record requirements of the Act are principally enforced by state education agencies, with oversight by the Office of Special Education Programs in the U.S. Department of Education. State agencies are responsible for developing detailed policies to govern the implementation of the law by local education agencies and institutions.

Access Rights of Parents

While access and other rights guaranteed to parents by FERPA may only be exercised by biological or custodial parents (including foster parents), the IDEA definition of "parent" is broader, permitting "persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives" to exercise the rights of parents.

Like FERPA, IDEA requires that parents be given an opportunity to inspect and review student records within 45 days after making a request. IDEA further stipulates, however, that access must be granted prior to a hearing or IEP meeting which relates to the child's education.

Access Rights of Students

FERPA provides for the automatic transfer of rights relating to student information from a parent to a student when the student attains the age of 18. The transfer of rights is not automatic under IDEA. Instead, state education agencies are required to develop policies regarding the transfer of rights to students which take into consideration "the age of the child and type or severity of disability."

Limits on Non-Consensual Disclosure

IDEA imposes greater restrictions on the non-consensual disclosure of student information than FERPA. Parental consent is required to disclose personally identifiable information about an IDEA student to any person other than an educator or other professional who has a "legitimate educational interest."

Parental consent is also required if student information is used for any purpose other than to meet an IDEA requirement. State education agencies are required to establish policies to assist schools in addressing circumstances in which a parent refuses to grant consent to information disclosures.

Destruction of Student Records

IDEA requires schools and agencies to notify parents whenever personally identifiable student information is no longer needed to provide services to the student. The information must be destroyed at the request of the parents.

At its discretion, the agency or school may continue to maintain a permanent record of the student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and the year completed.

Additional Procedural Safeguards

IDEA sets out additional procedural safeguards as well. Each local agency or school is required to:

- Provide training to personnel who use student information about the requirements of FERPA and IDEA
- Maintain a list of all employees with access to student information

of its findings and the basis for its findings.

(c) If the Office finds that the recipient or contractor has not complied with section 439 of the Act, the Office includes in its notice under paragraph (b) of this section:

(1) A statement of the specific steps that the Secretary recommends the recipient or contractor take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the recipient or contractor may comply voluntarily.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232h)

§ 98.10 Enforcement of the findings.

(a) If the recipient or contractor does not comply during the period of time set under §98.9(c), the Secretary may either:

(1) For a recipient, take an action authorized under 34 CFR part 78, including:

(i) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(ii) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b), or 298.45(b), depending upon the applicable program under which the notice is issued; or

(iii) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued; or

(2) For a contractor, direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulations, including either:

(i) Issuing a notice to suspend operations under 48 CFR 12.5; or

(ii) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(b) If, after an investigation under §98.9, the Secretary finds that a recipient or contractor has complied voluntarily with section 439 of the Act, the Secretary provides the complainant and the recipient or contractor written notice of the decision and the basis for the decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232h)

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

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AUTHORITY: 20 U.S.C. 1232g, unless otherwise noted.

SOURCE: 53 FR 11943, Apr. 11, 1988, unless otherwise noted.

Subpart A—General

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in §99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if—

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59295, Nov. 21, 1996]

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

NOTE: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59295, Nov. 21, 1996]

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

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Attendance includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

Directory information means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

Educational agency or institution means any public or private agency or institution to which this part applies under §99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

Education records. (a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of §99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not

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beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

Party means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

Personally identifiable information includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

Student, except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

[53 FR 11943, Apr. 11, 1988, as amended at 60 FR 3468, Jan. 17, 1995; 61 FR 59295, Nov. 21, 1996]

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

§ 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3188, Jan. 7, 1993]

§ 99.6 [Reserved]

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to—

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained

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in the student's education records, except to the extent that the Act and §99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under §§99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under §99.20.

(iii) If the educational agency or institution has a policy of disclosing education records under §99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g (e) and (f))

[61 FR 59295, Nov. 21, 1996]

§99.8 What provisions apply to records of a law enforcement unit?

(a)(1) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to—

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a *law enforcement unit* if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are—

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean—

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of §99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii))

[60 FR 3469, Jan. 17, 1995]

Subpart B—What Are the Rights of Inspection and Review of Education Records?

§99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under §99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to—

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(e) The educational agency or institution, or SEA or its component shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of *Education records* in §99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

§99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements; and

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(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A), (B), (C), and (D))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

Subpart C—What Are the Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

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(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§ 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

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(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, *financial aid* means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically—

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term *organization* includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with—

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.

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(10) The disclosure is in connection with a health or safety emergency, under the conditions described in §99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in §99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2), (b)(4)(B), and (f))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 61 FR 59296, Nov. 21, 1996]

§99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under §99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under §99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in §99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under §99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior

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consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), or to disclosures to a parent or student under § 99.31(a)(12).

(d) Except for disclosures under § 99.31(a) (9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(h)(4)(B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

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(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974, concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

[61 FR 59297, Nov. 21, 1996]

Subpart E—What Are the Enforcement Procedures?

§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, *Office* means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

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(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term *applicable program* is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U. S. Department of Education, Washington, DC 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232g(f))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution—

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993]

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§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act—

(1) Withhold further payments under any applicable program;

(2) Issue a compliant to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(NOTE: 34 CFR part 78 contains the regulations of the Education Appeal Board)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

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DEPARTMENT OF EDUCATION

34 CFR Part 98

RIN 1880-AA66

Protection of Pupil Rights

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Pupil Protection Rights Amendments of 1994 (PPRA) to the Protection of Pupil Rights provision contained in the General Education Provisions Act (GEPA). PPRA was amended in the Goals 2000: Educate America Act (Pub. L. 103-227). The proposed regulations rename and revise the current regulations (34 CFR part 98 "Student Rights in Research, Experimental Activities, and Testing") for the Protection of Pupil Rights to implement these statutory changes and to make other changes that are necessary for proper program operation.

DATES: Comments must be received on or before October 27, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 600 Independence Avenue SW., room 1366, Washington, DC 20202-4605. Comments may also be sent through Internet to "PPRA—Comments@ed.gov."

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the *Paperwork Reduction Act of 1980* section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 600 Independence Avenue, SW., room 1366, Washington, DC 20202-4605. Telephone: (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with states and localities. The Secretary proposes these regulations because he believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while retaining parents' and students' rights.

The Secretary interprets the Protection of Pupil Rights provision, as amended, contained in section 445 of the General Education Provisions Act (GEPA) to provide parents with the right to have access to surveys, analyses, or evaluations (surveys) administered by a State educational agency (SEA), local educational agency (LEA), or other recipient that asks a student to reveal information concerning the areas specified in section 445(b) of GEPA. In addition, parents or the student, if a student is an adult or an emancipated minor, must consent before a student is required to submit to a survey that asks a student to reveal information concerning these areas. Finally, parents or the student, if a student is an adult or an emancipated minor, must be notified of these rights and may file a complaint for alleged violations of these rights.

Summary of Major Provisions

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute, such as interpretations of statutory text or standards and procedures for the operation of the program. The summary does not address provisions that merely restate statutory language. The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

Section 98.1 Applicable Program

The Protection of Pupil Rights provision contained in GEPA applies to any program that is an "applicable program" under section 400(c)(1) of GEPA. Under this section the term "applicable program" means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act (DEOA) or under Federal law effective after May 4, 1980.

Section 98.2 Purpose

The Secretary interprets section 445 of GEPA to provide four general rights: (1) Parental right of access to certain surveys and the instructional material used in connection with these surveys of a student; (2) parental or student right to consent before a student is required to submit to certain surveys; (3) parental or student right to file a complaint for alleged violations of their rights under the law; and (4) parental or student right to receive effective notice of these rights. The Secretary would implement each of these rights in the proposed regulations.

Section 98.3 Definitions

The Secretary proposes to define "recipient" to include (1) a contractor who receives financial assistance directly from the Department to carry out the project and (2) the Department. This definition clarifies that any survey that the Department directly contracts for or carries out itself would be subject to these regulations.

The Secretary proposes not to define the term "survey" because he believes the term is self-explanatory. The Secretary would welcome comment on whether the terms "survey, analysis, or evaluation" as used in section 445 of GEPA should be defined in regulations.

Sections 98.10, 98.20 Access and Consent

Section 445(a) of GEPA provides for the parental right of access to instructional materials that will be used in connection with any survey as part of any applicable program.

Section 445(b) of GEPA provides for the parent's, in the case of an unemancipated minor, and student's, if the student is an adult or emancipated minor, right of consent to submit to a survey that reveals information concerning one or more of the areas specified in the statute (also listed in § 98.4(a)(2)).

The Secretary interprets the statutory provisions on access and consent to be read together; this interpretation would require an SEA, LEA, or other recipient of program funds from the Department of Education to make available for inspection by a parent or guardian only those surveys (and instructional material in connection with a survey) concerning one or more of the areas listed in section 445(b) of GEPA. Because, unlike the Family Educational Rights and Privacy Act (FERPA), this statute makes no specific reference applying the access and consent provisions to post-secondary institutions and the legislative history supports only applying these provisions to elementary and secondary school students, these proposed regulations will only apply to surveys administered in elementary and secondary schools.

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—*Access provision:* The Secretary would implement the access provision by requiring that an SEA, LEA, or other recipient that uses any type of program funds received from the Department, to develop or implement a survey must make available for inspection by a parent or guardian of a student a survey, and the instructional materials used in connection with the survey, if the survey (1) asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA; and (2) is administered in an elementary or secondary school.

—*Compliance with a request for access:* An SEA, LEA, or other recipient would be required to comply with a request to inspect a survey (and the instructional materials used in connection with the survey) without unnecessary delay and in no case more than 45 days after it has received the request. This requirement is consistent with FERPA. Also, the Secretary believes this requirement is a reasonable way to ensure a prompt response to a parent's request for access to these materials while not requiring an SEA, LEA, or other recipient to provide immediate access.

An SEA, LEA, or other recipient would not be required to provide parents with their own copy of a survey (and the instructional material used in connection with the survey). The Secretary believes that such a requirement would be unduly burdensome. The Secretary notes, however, that an SEA, LEA, or other recipient may wish to provide a copy of a survey in order to accommodate parents with disabilities.

—*Destruction of material:* An SEA, LEA, or other recipient would not be permitted to destroy any survey or the instructional material used in connection with the survey, if there is an outstanding request to inspect the material under § 94.10 of the regulations. The Secretary believes this provision is necessary to ensure that a parent's request for access is not frustrated.

—*Consent provision:* The Secretary would implement the consent provision by requiring an SEA, LEA, or other recipient to obtain the prior consent of the parent or guardian, or student, as appropriate, before a student is required to submit to the survey if the SEA, LEA, or other recipient (1) uses any type of program funds, received from the Department, to develop or implement a survey; (2) the survey is administered in an elementary or secondary school; and (3) requires a student to submit to a survey that asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA. The Secretary has not interpreted "required" as used in section 445(b) of GEPA. By not interpreting the word "required", the Secretary will not be imposing a single rule to address a myriad of situations. Recipients will make initial judgments in individual cases as to whether a survey is or has been "required" in the administration of their activities. In the event a complaint is filed with the Department, the Department will determine on a case-by-case basis in light of all the circumstances whether a student has been required to submit to a survey.

Section 445(b) of GEPA provides that if a student is an unemancipated minor, a parent or guardian of a student provides the consent. If a student is an adult or emancipated minor, the student provides the consent. An adult would be defined as an individual who has attained 18 years of age. An emancipated minor would be defined according to the definition under State law.

—*Obtaining consent:* To meet the requirements of prior consent an SEA, LEA, or other recipient must provide an opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in section 445(b) that is included in the survey and to provide information to the parent or guardian on the right to inspect the materials before the student submits to the survey. Rather than prescribing in regulations a standard form of written consent for parents or guardians, the Secretary proposes to allow an SEA, LEA, or other recipient the flexibility to develop its own type of written consent. To provide guidance to SEAs, LEAs, and other recipients, the Department intends to develop a model consent form.

Section 98.30 LEA Notification

Section 445(c) of GEPA provides that educational agencies and institutions shall give parents and students effective notice of their rights. The Secretary would implement this provision by requiring each LEA to give effective notice to parents of students in attendance, and students currently in attendance, at the LEA of their rights under the regulations. The notice would state, at a minimum, that parents and students have the four rights listed in § 98.2. An LEA would have the option to include more information in the notice. With respect to frequency, an annual notification, for example, would constitute an effective notice.

Section 98.40 Family Policy Compliance Office and the Office of Administrative Law Judges Functions

Section 445(e) of GEPA requires the Secretary to establish or designate an office and review board within the Department to investigate, process, review, and adjudicate violations of the rights established under this section. The Secretary would designate the Family Policy Compliance Office (Office) to investigate, process, and review complaints of violations under the regulations and to provide technical assistance to ensure compliance with the regulations. The Secretary would designate the Office of Administrative Law Judges as having jurisdiction over proceedings to recover, withhold, and terminate funds and to conduct hearings to compel compliance through cease and desist orders.

Section 98.41 Conflict With State or Local Laws

If an SEA or LEA determines that it cannot comply with the requirements of these regulations due to a conflict with State or local laws, it would be required to notify the Office within 45 days, giving the text and citation of the conflicting law. This provision is consistent with the Family Educational Rights and Privacy regulations (34 CFR 99.61). The Secretary believes that, to the extent possible, these proposed regulations should parallel the regulations implementing the Federal Educational Rights and Privacy Act (FERPA) because both the protection of pupil rights legislation and FERPA were originally introduced together with a common purpose and, therefore, should be administered in a similar fashion.

Section 98.42 SEA or LEA Required Reports

Under the proposed regulations the Office may require an SEA or LEA to submit reports containing information necessary to resolve complaints under this part, including information regarding the source of funding for the survey, and to ensure that SEAs, LEAs, or other recipients are complying with the statute. This requirement is in the current regulations (34 CFR 98.6).

Sections 98.43, 98.44, 98.45 Complaint Procedures

The statute does not specify any procedures for filing or processing a

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complaint. The regulations would allow a parent or student, as appropriate, to file a written complaint with the Office regarding an alleged violation under this part. This requirement is in the current regulations (34 CFR 98.7(a)).

The proposed regulations would clarify when a parent and student have a right to file a complaint. Also, the proposed regulations would require that a complaint contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred. The Office would investigate each timely complaint to determine whether an SEA, LEA, or other recipient has failed to comply with the proposed regulations. These requirements are in 34 CFR 98.7(a) and (b), respectively, of the current regulations.

The proposed regulations clarify when a complaint would be timely and when the Office may extend the time limit. These provisions are consistent with the requirements in 34 CFR 99.64(c) and (d) of the FERPA regulations. Again, the Secretary believes that for the reasons already discussed, and to the extent possible, the proposed regulations should be consistent with the FERPA regulations.

—*Notice of complaint issued by the Office:* The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint and notifies the complainant if it does not initiate an investigation of a complaint. The required content of the notice to the SEA, LEA, or other recipient is consistent with 34 CFR 98.8(a) and (b) of the current regulations. The Secretary believes this notification is necessary to keep the complainant properly informed of the status of his or her complaint.

Sections 98.46, 98.47 Enforcement Process

The statute does not prescribe any enforcement procedures except for the establishment or designation of an office and review board within the Department of Education to investigate, process, review and adjudicate violations of the rights established by section 445 of GEPA. Under the proposed regulations, the Office would review a complaint and response and may permit the parties to submit further written or oral arguments or information. Following its investigation, the Office would provide to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings. If the Office found that the SEA, LEA, or other recipient had not complied with these regulations, the notice would (1) include a statement of the specific steps that the SEA, LEA, or other recipient must take to comply; and (2) provide a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily. This procedure is consistent with that in 34 CFR 98.9 of the current regulations.

If an SEA, LEA, or other recipient other than a contractor does not voluntarily comply with the proposed regulations, the Office may, in accordance with part D of GEPA, (1) withhold, recover, or terminate funds under 34 CFR 81.3; or (2) issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3. This is consistent with 34 CFR 98.10(a)(1) of the current regulations.

If a contractor does not voluntarily comply with the proposed regulations, the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either (1) issuing a notice to suspend operations under 48 CFR 12.5; or (2) issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

If, after an investigation, the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with these regulations, the Secretary provides the complainant and the SEA or LEA written notice of the decision and the basis for the decision. These enforcement provisions are consistent with 34 CFR 98.10(b) of the current regulations.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary to administer this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 98.1 *To which programs do these regulations apply?*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB-10B), Washington, DC 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds from the Department. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would

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impose minimal requirements to ensure that LEAs comply with the pupil protection requirements in GEPA.

Paperwork Reduction Act of 1980

Section 98.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

SEAs, LEAs, and other recipients may be affected by these regulations. The Department needs and uses the information to ensure compliance with requirements in the Pupil Protection Rights in GEPA. Annual public reporting burden for this collection of information is estimated to be .25 hours per response for 15,713 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. This section highlights those issues already discussed in the preamble on which the Secretary would particularly like comment.

The Secretary has attempted to balance a number of interests by interpreting "applicable program" narrowly and applying these regulations only to surveys that are developed or implemented under Department programs. The Secretary believes that this interpretation balances the rights of parents and students under the statute with the interests of local governments and schools in minimal administrative burdens. The Secretary requests comments on this interpretation. The Secretary is trying to minimize the role of the Federal government in implementing the statute.

The Secretary specifically requests comments from school officials regarding the practicality of a narrow interpretation. As proposed, if asked, an SEA or LEA would have to be able to identify which funds it used to develop, or otherwise implement, a survey. On the other hand, if the Secretary interpreted "applicable program" broadly, the regulations would apply to any survey given by a school that receives money from the Department, and an identification of whether Department money was used in developing or implementing the survey would be unnecessary. The Secretary welcomes comments on whether school officials believe the broader interpretation of "applicable program" would be less burdensome.

The Secretary also requests comments on whether it is clear that these proposed regulations only apply to surveys that are developed, purchased, implemented, or otherwise funded under Department programs covered by section 445 of GEPA. The Secretary also requests comments on whether the provisions regarding access and consent rights, §§ 98.10 and 98.20 respectively, provide adequate guidance.

As previously stated in the preamble the Secretary would like comments on whether the regulations should include a definition of "survey" (see discussion of § 98.3 Definitions) and "required" (see discussion of §§ 98.10, 98.20 Access and consent: Obtaining consent).

Finally, as already discussed, the regulations interpret the statute to apply to surveys administered in elementary or secondary schools because the statute specifically provides protections under this law to "students." The Secretary requests specific comments on whether the statutory provisions should be interpreted to include surveys administered in settings outside of schools, such as Department-sponsored household-based surveys, conducted either by telephone or in person.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 1366, FOB-10, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 98

Administrative practice and procedure, Education, Educational research, Privacy, Reporting and recordkeeping requirements, Schools, and Students.

Dated: August 21, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 98 to read as follows:

PART 98—PROTECTION OF PUPIL RIGHTS

Subpart A—General

Sec.

98.1 To which programs do these regulations apply?
98.2 What is the purpose of these regulations?
98.3 What definitions apply to these regulations?

Subpart B—Access

98.10 What are a parent's rights of access to a survey?

Subpart C—Consent

98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

Subpart D—Notification

98.30 What must an LEA include in its annual notification?

Subpart E—Enforcement

98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?
98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?
98.42 What information must an SEA, LEA, or other recipient submit to the Office?
98.43 Where are complaints filed?
98.44 What is the complaint procedure?
98.45 What is the content of the notice of complaint issued by the Office?
98.46 What are the responsibilities of the Office in the enforcement process?
98.47 How does the Office enforce decisions?

Authority: 20 U.S.C. 1232h, unless otherwise noted.

Subpart A—General

§ 98.1 To which programs do these regulations apply?

This part applies to any applicable program, that is, any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law.

(Authority: 20 U.S.C. 1232h)

§ 98.2 What is the purpose of these regulations?

Parents and students have the following rights under this part:

(a) Parental right to have access to certain surveys, analyses, or evaluations

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(surveys), and the instructional materials used in connection with these surveys of a student.

(b) Parental or student right to consent before the student is required to submit to certain surveys.

(c) Parental or student right to file a complaint for alleged violations of the rights in paragraphs (a), (b), and (d) of this section.

(d) Parental or student right to receive effective notice of the rights under paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1232h)

§ 98.3 What definitions apply to these regulations?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Department
Elementary school
Grantee
Local educational agency (LEA)
Secondary school
Secretary
State educational agency (SEA).

(b) *Other definitions.* The following definitions also apply to this part:

Adult means an individual who has attained 18 years of age.

Emancipated minor means a person under 18 years of age who would be considered emancipated according to state law.

Recipient, for the purposes of this part, means a grantee, subgrantee, or contractor that receives financial assistance directly from the Department to carry out a project and includes the Department.

(Authority: 20 U.S.C. 1232h)

Subpart B—Access

§ 98.10 What are a parent's rights of access to a survey?

(a) An SEA, LEA, or other recipient that receives funds from the Department to develop or implement a survey shall make available for inspection by a parent or guardian of a student the survey, and the instructional materials used in connection with the survey, if the survey—

(1) Is administered in an elementary or a secondary school; and

(2) Asks the student to reveal information concerning one or more of the following areas:

(i) Political affiliations.

(ii) Mental and psychological problems potentially embarrassing to the student or his or her family.

(iii) Sex behavior and attitudes.

(iv) Illegal, anti-social, self-incriminating, and demeaning behavior.

(v) Critical appraisals of other individuals with whom the student has close family relationships.

(vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.

(vii) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b)(1) An SEA, LEA, or other recipient shall comply with a parent's request to inspect a survey (and the instructional material used in connection with the survey) under paragraph (a) of this section without unnecessary delay and in no case more than 45 days after the recipient receives the request.

(2) An SEA, LEA, or other recipient is not required to give a personal copy of the survey, and the instructional materials, to a parent who requests to inspect a survey under paragraph (a) of this section.

(c) An SEA, LEA, or other recipient may not destroy any survey, or any instructional material used in connection with the survey, if there is an outstanding request by a parent to inspect the material under this section.

(d) An SEA, LEA, or other recipient shall make the survey available for inspection under paragraph (a) of this section even if a student is not required to submit to the survey under § 98.20.

(Authority: 20 U.S.C. 1232h(a))

Subpart C—Consent

§ 98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

(a) An SEA, LEA, or other recipient shall obtain the prior consent of the parent or guardian of a student, or the student, if appropriate under paragraph (b) of this section, before the student is required to submit to the survey if the SEA, LEA, or other recipient—

(1) Uses funds, received from the Department, to develop or implement the survey;

(2) Administers the survey in an elementary or secondary school;

(3) Requires the student to submit to the survey; and

(4) Asks the student in the survey to reveal information concerning one or more of the areas listed in § 98.10(a)(2).

(b)(1) If a student is an unemancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section, in writing, from the parent or guardian of the student.

(2) If a student is an adult or emancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section from the student.

(c) To meet the requirements of prior consent the SEA, LEA, or other recipient must provide—

(1) An opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in § 98.10(a)(2) that is included in the survey; and

(2) Information to the parent or guardian on the right to inspect these materials before the student submits to the survey.

(Authority: 20 U.S.C. 1232h(b))

Subpart D—Notification

§ 98.30 What must an LEA include in its notification?

(a) Each LEA shall give effective notice to parents of students in attendance, and to students currently in attendance at the LEA of their rights under this part.

(b) The notice must state that parents and students have the rights listed in § 98.2.

(c) As used in paragraph (a) of this section, effective notice means a notice that is reasonably likely to inform parents and students, including those with disabilities and those whose primary or home language is not English, of their rights.

(Authority: 20 U.S.C. 1232h(c))

Subpart E—Enforcement

§ 98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?

(a) The Family Policy Compliance Office (Office)—

(1) Investigates, processes, and reviews complaints of violations under this part; and

(2) Provides technical assistance to ensure compliance with this part.

(b) The Office of Administrative Law Judges has jurisdiction to conduct the following proceedings to enforce the requirements in this part—

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Termination hearings.

(4) Cease and desist hearings.

(Authority: 20 U.S.C. 1232h(e))

§ 98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?

If an SEA or LEA determines that it cannot comply with any of the requirements of this part due to a conflict with State or local laws, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

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(Authority: 20 U.S.C. 1232h)

§ 98.42 What information must an SEA, LEA, or other recipient submit to the Office?

The Office may require an SEA, LEA, or other recipient to submit reports containing information necessary—

(a) To resolve complaints under this part, including information regarding the source of funding for the survey; and

(b) To ensure that SEAs, LEAs, or other recipients are complying with the statute.

(Authority: 20 U.S.C. 1232h)

§ 98.43 Where are complaints filed?

A parent or student, as appropriate under § 98.44(a), may file a written complaint with the Office regarding an alleged violation under this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW., FOB-10, room 1366, Washington, D.C. 20202-4605.

(Authority: 20 U.S.C. 1232h(d))

§ 98.44 What is the complaint procedure?

(a)(1) A parent may file a complaint under this part for alleged violations of the parent's rights of access, consent, or to be notified of the parent's rights under §§ 98.10, 98.20, and 98.30.

(2) A student who is an emancipated minor or an adult may file a complaint under this part for alleged violations of the student's rights to consent or to be notified of the student's rights under §§ 98.20 and 98.30.

(b) A complaint filed under § 98.43 must contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred.

(c) The Office investigates each timely complaint to determine whether the SEA, LEA, or other recipient has failed to comply with the provisions of this part.

(d)(1) For purposes of this section, a timely complaint is an allegation of a violation of this part that is submitted to the Office within 180 days of—

(i) The date of the alleged violation; or

(ii) The date that the complainant knew or reasonably should have known of the alleged violation.

(2) The Office may extend the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232h(d))

§ 98.45 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint under § 98.46(b). The notice to the SEA, LEA, or other recipient—

(1) Includes the substance of the alleged violation; and

(2) Requests that the SEA, LEA, or other recipient submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 98.44.

(Authority: 20 U.S.C. 1232h(d))

§ 98.46 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings.

(c) If the Office finds that the SEA, LEA, or other recipient has not complied with this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the SEA, LEA, or other recipient must take to comply; and

(2) Provides a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily.

(Authority: 20 U.S.C. 1232h(d))

§ 98.47 How does the Office enforce decisions?

(a) If the SEA, LEA, or other recipient other than a contractor does not comply during the period of time set under § 98.46(c)(2), the Office may, in accordance with part D of the General Education Provisions Act—

(1) Withhold, recover, or terminate funds under 34 CFR 81.3; or

(2) Issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3.

(b) If a contractor does not comply during the period of time set under § 98.13(c)(2), the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either—

(1) Issuing a notice to suspend operations under 48 CFR 12.5; or

(2) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(c) If, after an investigation under § 98.44(c), the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with this part, the Secretary provides the complainant and the SEA, LEA, or other recipient written notice of the decision and the basis for the decision.

(Authority: 20 U.S.C. 1232h(d))

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which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340-300.350 and §§ 300.550-300.556.

The analysis of the regulations for section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(5)(B))

NOTE: Section 300.553 is taken from a requirement in the final regulations for section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the section 504 regulations includes the following statement: "[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

NOTE: Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(5)(B))

CONFIDENTIALITY OF INFORMATION

§ 300.560 Definitions.

As used in §§ 300.560-300.576—

Destruction means physical destruction or removal of personal identifiers

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from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of education records in part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.128, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in part 99 of this title.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose

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for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

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§ 300.570 Hearing procedures.

A hearing held under § 300.568 must be conducted according to the procedures under § 99.22 of this title.

[57 FR 48694, Oct. 27, 1992]

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 and part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D), 1417(c))

NOTE: Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

§ 300.574 Children's rights.

The SEA shall include policies and procedures in its State plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

NOTE: Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

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§ 300.575 Enforcement.

The SEA shall describe in its State plan the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. 552a (b)(1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in part 5b of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

DEPARTMENT PROCEDURES

§ 300.580 [Reserved]

§ 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the SEA written notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(c))

§ 300.583 Hearing official or panel.

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. 1413(c))

§ 300.584 Hearing procedures.

(a) As used in §§ 300.581-300.586 the term *party or parties* means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

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